

In the Matter of AARON FERER & SONS, INC. AND WIPING MATERIALS,  
INC. and DISTRICT 50, UNITED MINE WORKERS OF AMERICA

*Case No. 14-R-768.—Decided November 19, 1943*

*Mr. B. L. Liberman*, of St. Louis, Mo., for the Companies.  
*Messrs. Joe Ecoppi, George Williford, and Earl Suwer*, of St.  
Louis, Mo., for the Union.  
*Mr. William R. Cameron*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon amended petition duly filed by District 50, United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Aaron Ferer & Sons, Inc., and Wiping Materials, Inc., both of St. Louis, Missouri, hereinafter collectively referred to as the Companies and singularly as Ferer & Sons and Wiping Materials, the National Labor Relations Board provided for an appropriate hearing upon due notice before Keith W. Blinn, Trial Examiner. Said hearing was held at St. Louis, Missouri, on October 19, 1943. The Companies and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

Aaron Ferer & Sons, Inc., is a Missouri corporation having its office and principal place of business at St. Louis, Missouri, where it is engaged in the grading and baling of rags. During the year 1942 Aaron Ferer & Sons, Inc., purchased raw material amounting

in value to more than \$500,000, of which approximately 80 percent was obtained from points outside the State of Missouri, and during the same period sold finished products amounting in value to more than \$550,000, of which a similar percentage was shipped to points outside the State of Missouri.

Wiping Materials, Inc., is a Missouri corporation, also having its office and principal place of business at St. Louis, Missouri, where it is engaged in the processing, sterilizing, laundering, and baling of wiping materials. During the year 1942, Wiping Materials, Inc., purchased raw materials amounting in value to more than \$200,000, of which approximately 40 percent was obtained from points outside the State of Missouri, and during the same period sold finished products amounting in value to more than \$300,000, of which approximately 80 percent was shipped to points outside the State of Missouri.

Each of the Companies concedes that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

District 50, United Mine Workers of America, is a labor organization admitting to membership employees of the Companies.

## III. THE QUESTION CONCERNING REPRESENTATION

The Union, by letter dated August 28, 1943, notified the Companies that it claimed to represent a majority of the Companies' employees, and requested a collective bargaining conference. The attorney for the Companies replied by letter dated August 30, 1943, requesting that the Union submit written evidence of such representation. Subsequently, at a conference arranged under Board auspices, the Companies refused to recognize the Union, stating that they considered the unit sought by the Union not to be appropriate and that they doubted the Union's majority representation.

Statements of the Regional Director and of the Trial Examiner, introduced in evidence at the hearing, indicate that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>1</sup>

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<sup>1</sup>The Regional Director reported that the Union submitted 73 authorization cards, all bearing apparently genuine original signatures, of which 12, dated in August 1943, were the names of persons whose names appeared on the pay roll of Aaron Ferer & Sons, Inc., containing 65 names within the unit claimed to be appropriate, and 42, most of them dated in August 1943, were the names of persons whose names appeared on the pay roll of Wiping Materials, Inc., containing 74 names within the unit claimed to be appropriated. Both pay rolls were for the period ending September 2, 1943.

At the hearing the Trial Examiner stated that the Union had submitted 43 additional authorization cards, all bearing apparently genuine original signatures. Subsequent to the hearing, the Trial Examiner reported that a second check of all the cards submitted

We find that a question affecting commerce has arisen concerning the representation of employees of the Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNIT

The Union seeks a unit comprising the production and maintenance employees of the Companies, excluding supervisors, truck drivers, office and clerical employees, and watchmen. The Companies do not generally dispute the specific composition of the unit, but contend that the employees of each of the Companies separately constitute an appropriate unit.

The record discloses that although each of the Companies is separately incorporated, a single individual, Samuel Ferer, is president of both. Samuel Ferer and his wife own all common stock of Ferer & Sons, which in turn owns 50 percent of the stock of Wiping Materials. Ferer & Sons sells to Wiping Materials from 15 to 20 percent of its finished products which constitute 45 percent of the raw materials of the latter company. The Companies' operations are carried on, and their materials stored, in a group of closely adjoining buildings, two of which are occupied by both Companies. Although it appears that the employees of each Company are on a separate pay roll and do not work together at any of the Companies' operations, they nevertheless enter the buildings through the same doorway, punch a common timeclock, and are paid at the same time by one person acting for both Companies. Their rates of pay are similar. The Companies maintain a single office, having but one telephone switchboard, and the stenographers, switchboard operator, and pay-roll clerk are paid by both Companies. Although the employees of each Company are under the supervision of a separate supervisor, the record indicates that ultimate responsibility for labor relations in respect

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by the Union revealed that 77 of these cards bore the signatures of persons whose names appear on the pay rolls of the Companies for October 15, 1943, which contained 187 names of employees within the unit hereinafter found appropriate.

A motion was made by the Companies at the hearing to dismiss the petition filed in this proceeding upon the ground that no evidence was submitted that the Union is the authorized representative of the majority of the employees of either one or both of the Companies, in the unit which it claims to be appropriate. Counsel for the Companies indicated the Companies' position to be that if they were given opportunity to examine the cards designating the Union as the bargaining representative, and to check them against their pay rolls, they would consider a majority designation thus determined as sufficient. The Union has declined to submit to the Company its evidence of representation. In such circumstances it is not the Board's policy to require a labor organization to exhibit its evidence of representation for the inspection of other parties, because the employees involved might thus be exposed to the possibility of reprisal. The Union in submitting designations to the Board, does not seek certification but merely an election. Authorization or membership cards are required to be submitted simply as a precaution against indiscriminate institution of representation proceedings by labor organizations which might have received little or no actual designation for representation among the employees involved. See *Matter of Samson Tire and Rubber Corporation*, 2 N. L. R. B. 148, 156. The motion is hereby denied.

to both Companies rests in their president, Samuel Ferer. We have frequently held that employees of companies thus closely related by corporate structure, whose plants are physically contiguous, having related operations and similar working conditions, and wherein the responsibility for labor relations is ultimately lodged in a single source, may together constitute a unit appropriate for the purposes of collective bargaining.<sup>2</sup> In view of all the circumstances herein disclosed, we are of opinion that the employees of the Companies together constitute an appropriate unit.

At the hearing controversy developed with respect to inclusion within the unit of the employees Mary Chenileweske, Mary Walker, Anna Bauza, and Nelson Moore. The Companies desire the inclusion of these employees, whereas the Union, contending that they are supervisors, seeks to exclude them. The record discloses that Mary Chenileweske is regarded as assistant to the supervisor in Ferer & Sons, and substitutes for him in his absence. Mable Walker and Anna Bauza are foreladies, receiving a salary from Wiping Materials, and have authority to recommend promotion or discipline. Nelson Moore is a salaried employee of both Companies, and the record shows that his recommendation as to promotion or discipline would be effective. We find that these employees are supervisors within our customary definition, and we shall therefore exclude them.

The Companies also seek to include, and the Union to exclude, an employee employed by Wiping Materials who is classified as a truck driver. His duties consist principally of transporting raw materials and finished products between the Wiping Materials plant and the railway. No other truck driver is employed by either of the Companies. We shall include the truck driver in the unit.

We find that all production and maintenance employees of the Companies, including the truck driver, but excluding office and clerical employees, watchmen, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-

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<sup>2</sup> See *Matter of Arnolt Motor Company, Inc., and S. H. Arnolt, d/b/a Atlas Steel & Tube Company*, 52 N. L. R. B. 856; *Matter of North Carolina Finishing Company, et al.*, 44 N. L. R. B. 681; *Matter of Ken-Rad Tube and Lamp Corporation*, 42 N. L. R. B. 1235; *Matter of John Deere Tractor Company*, 40 N. L. R. B. 904.

roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

### DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Aaron Ferer & Sons, Inc., and Wiping Materials, Inc., St. Louis, Missouri, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Fourteenth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by District 50, United Mine Workers of America, for the purposes of collective bargaining.